KHOO TIANG SENG v. PEOPLE'S INSURANCE CO. LTD.

[O.C.J. (Choor Singh J.) January 14, 1965]

[Singapore — Suit No. 1573 of 1963]

Motor Vehicles (Third-party Risks and Compensation) Ordinance, 1960, s. 8(1) — Liability of insurers on judgment against driver of motor vehicle — Whether driver was driving motor vehicle on order or with the permission of the insured — Onus of proof.

Insurance — Third-party risks — Liability of insurers on judgment against driver of motor vehicle.

Practice & Procedure — Who should begin in claim under s.8, Motor Vehicles (Third-party Risks and Compensation) Ordinance, 1960.

Yew Seng & Co. were the owners of a car which was insured with the defendants in respect of any liability which may be incurred by them in respect of bodily injury to any person caused by the use of the car. The proprietor of Yew Seng & Co. requested one Chua a motor repairer to conduct certain repairs to his car. Chua took the car to his workshop, repaired it and after test-driving it took it back to his workshop. Subsequently he intended to take the car back to the owners and asked two of his friends to accompany him. On the way Chua and his friends decided to have lunch and Chua therefore drove the car past Yew Seng & Co.'s office towards Queen Street market where they intended to have lunch. Before they could reach the Queen Street market the car was involved in a collision in which the plaintiff was injured. The plaintiff obtained judgment for damages and costs against Chua and alleged that the defendants were liable to pay him the amount of the damages and costs by reason of the provisions of section 8(1) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960. There was evidence that on previous occasions when the car was sent to Chua for repairs, he had used the car for going to lunch and had afterwards informed the proprietor of Yew Seng & Co. who had raised no objections. A preliminary point was raised at the trial as to who should begin in an action under section 8(1) of the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960.

Held: (1) as the plaintiff's claim was a statutory claim he had to comply strictly with those provisions of the statute on which his claim was based and therefore the plaintiff should begin and prove his case;

(2) in the circumstances of this case, the inference seemed irresistible that there was an implied consent to the car being used by Chua for going to lunch and therefore the car was being driven with the policy holders' permission at the time of the accident and under the terms of the policy Chua was entitled to be indemnified by the defendants in respect of the judgment and costs obtained against him by the plaintiff.

Cases referred to:—

(1) *Hibbs* v. *Ross* (1866) 35 L.J. Q.B. 193.

(2) *Barnard* v. *Sully* (1930) 47 T.L.R. 557.

(3) *Yang Moi* v. *Asia Insurance Co. Ltd.* [1964] M.L.J. 307, F.C.

(4) *Official Assignee* v. *China Insurance Co. Ltd.* [1957] M.L.J. 59.

(5) *Miller* v. *Liverpool Co-operative Society Ltd.* [1940] 4 All E.R. 367.

(6) *Ormrod* v. *Crossville Motor Services Ltd.* [1953] 2 All E.R. 753.

(7) *Yong Moi* v. *Asia Insurance Co. Ltd.* [1963] M.L.J. 329.

A CIVIL SUIT.

Robert Yap Tyou Min for the plaintiff.

Dennis Lee for the defendants.

Choor Singh J.: In this suit the plaintiff sought to recover a sum of $4,076.30 from the defendants being $2,500 the amount of judgment and $1,576.30 the amount of a taxed bill of costs obtained by the plaintiff against one Chua Ou Chye, the driver of motor-car SP. 5034 which was insured with the defendants. The defendants were alleged to be liable for the said sum of $4,076.30 by reason of the provisions of section 8(1) of the Motor Vehicles (Third-party Risks and Compensation) Ordinance, 1960.

The facts briefly were these. Yew Seng & Co. owned motor-car No. SP. 5034 (hereinafter referred to as "the car") which was insured with the defendants in respect of any liability which may be incurred by Yew Seng & Co. in respect of bodily injury to any person caused by the use of the car. On the 11th February 1963, at about 8 a.m. the sole proprietor of Yew Seng & Co. named Ah Bah requested Chua Ou Chye who has a motor-repair workshop at 400 Serangoon Road, Singapore, to carry out certain repairs to the car. Chua went to the premises of Yew Seng & Co. in Chitty Road and there he took possession of the car and drove it to his workshop in Serangoon Road. After carrying out the necessary repairs, Chua test-drove the car and brought it back to his workshop. Thereafter he repaired some other cars.

At about 11.50 a.m. Chua decided to return the car to Ah Bah. At that time there were in his workshop two of his friends named Ee Chye and Tan Boon Kian. Chua informed them that he was going to send the car back to its owner at Chitty Road and asked them if they would like to accompany him. They agreed and sat in the car and Chua drove off with the intention of returning the car to Ah Bah. When he had proceeded a short distance, his two friends in the car suggested that they should all go and have lunch together. Chua agreed, and instead of driving to Chitty Road to return the car to Ah Bah, he drove it past Chitty Road towards the Queen Street market where they intended to have lunch. Before they could reach the Queen Street market, the car was involved in a collision with the plaintiff, who was injured. The plaintiff brought a suit against Chua claiming damages, and on 27th September, 1963 the plaintiff was awarded damages in the sum of $2,500 and costs which were later taxed in the sum of $1,576.30 making a total of $4,076.30 payable by Chua.

The plaintiff alleged that the defendants were liable to pay to him the said sum of $4,076.30 by reason of the provisions of section

8(1) of the Motor Vehicles (Third-party Risks and Compensation) Ordinance, 1960, which reads as follows:

"If after a certificate of insurance has been issued under subsection (4) of section 4 of this Ordinance to the person by whom a policy has been effected judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section 4 of this Ordinance (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the Public Trustee as trustee for the persons entitled thereto any sum payable thereunder in respect of the liability including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

It was a condition of the policy of insurance under which the certificate of insurance had been issued to Yew Seng & Co. by the defendants that any person other than the insured will be covered thereunder against third-party risks only when such person was driving the car on the insured company's order or with their permission.

The defendants denied liability on the ground that at the time of the accident Chua was not driving the car on the order or with the permission of Yew Seng & Co.

At the trial there was a preliminary point taken by counsel for the plaintiff as to who should begin. His contention was that the defendants should begin and his argument was as follows. *Prima facie,* in a claim under section 8 of the Motor Vehicles (Third-party Risks and Compensation) Ordinance, 1960, the onus of proof is on the plaintiff to prove that the driver of the car was driving it with the owner's consent or permission. But in this case, the ownership of the car by Yew Seng & Co. was admitted by the defendants. Therefore the driver was to be presumed to be the servant or agent of the owner of the car and an agent who drives is obviously an authorised driver. Counsel relied on the decisions in *Hibbs* v. *Ross* [1] and *Barnard* v. *Sully*.[2] Counsel submitted that as soon as a plaintiff proves that the defendant is the owner of the car the burden of proof shifts to the defendant.

Counsel for the defendants' submission was as follows: The defendants in this case were not the owners of the car. The plaintiff must lead evidence to bring himself within the provisions of section 8 of the Motor Vehicles (Third-party Risks and Compensation) Ordinance, 1960. To invoke liability of the insurers the plaintiff must prove that the driver of the car drove it either on the order or with permission of the owner of the car. Counsel cited *Yong Moi* v. *Asia Insurance Co. Ltd.*[3] which is the leading case on this subject and pointed out that in that case the plaintiff began first and led evidence to prove his case.

In my view, it is unnecessary to deal with *Hibbs* v. *Ross* or *Barnard* v. *Sully* because the decisions in those two cases are not applicable to the present case. In *Hibbs* v. *Ross* the claim in an action for negligence was against the owner of a ship in respect of an accident which occurred on board the ship. In *Barnard* v. *Sully* the claim in an action for negligence was against the owner of a car in respect of an accident involving his car. In the present case, the defendants were not the owners of the car which caused the injuries to the plaintiff and therefore there could be no presumptions against them. The plaintiff's claim in this case was a statutory claim and in my view he had to comply strictly with those provisions of the Statute on which his claim was based. I therefore held, that the plaintiff should begin and prove his case.

On the facts, it was submitted by counsel for the defendants, that the plaintiff had not discharged the burden of proof. Counsel's argument was as follows. The plaintiff must prove that the car was at the time of the accident driven by Chua with the policy holder's permission. The evidence showed that Chua did not have express permission to drive it to the Queen Street market. When the car was sent for repairs, there was express permission for Chua to drive it to his workshop and drive it back after the repairs had been completed. There was implied permission to test the car after repairs and drive it for that purpose. The owner of the car did not part with the car completely. When Chua went in the car for his lunch, he was using the car for his own purpose. That was not a use for the purpose for which the car was entrusted to him nor was it reasonably incidental. At the time of the accident, the car was being used by Chua for his own social purpose and there was no implied consent for that.

There was evidence before the court that Chua had repaired the car on previous occasions. He had used the car on previous occasions for going to lunch and had afterwards informed Ah Bah who had not raised any objections.

It was submitted by counsel for the plaintiff that in the face of Chua's evidence that Ah Bah had on previous occasions acquiesced in the use of the car by Chua for going to lunch, there was implied consent of the owner of the car to what Chua did on the day in question.

In reply, counsel for the defendants submitted that because Chua had used the car to

go for lunch on previous occasions, it did not follow that there was implied consent on this occasion for Chua to go in the car for lunch. The moment Chua changed his mind and decided to go for lunch instead of returning the car to Ah Bah, he was not using it for the purpose for which the car was entrusted to him. On the journey to the Queen Street market for lunch, the car was being driven by Chua without the permission of the owner. The driver of the car at the time of the accident was not an authorised driver within the scope and terms of the policy and the plaintiff's claim must therefore fail.

There was no evidence that Ah Bah gave express permission for the car to be used by Chua for going to lunch and the question before the court, therefore, was whether or not in the circumstances it must be held that he gave implied permission.

A number of cases were cited in argument: *Yong Moi & Anor.* v. *Asia Insurance Co., Ltd.*;[3] *Official Assignee* v. *China Insurance Co., Ltd.*;[4] *Miller* v. *Liverpool Co-operative Society Ltd.*[5] and *Ormrod* v. *Crossville Motor Services Ltd.*[6] I find it unnecessary to deal with all these cases, because the principle involved has been clearly stated by Tan Ah Tah J. (as he then was) in *Yong Moi & Anor.* v. *Asia Insurance Co., Ltd.*[7] at page 331:

"It is probably impossible to state in comprehensive terms any principle which will enable it to be determined in every case whether implied permission has been given to the third person to drive the car. The determination of that question depends upon the view that is taken of the matter after consideration of the circumstances of each case."

On the evidence before me, I was of the opinion that having regard to the fact that on previous occasions when the car was sent to Chua for repairs, he had used it for going to lunch and to the fact that Ah Bah had raised no objection on previous occasions when informed that his car had been used for going to lunch, the inference seemed irresistible that there was an implied consent to the car being used by Chua for going to lunch on the day in question. I therefore held that at the time of the accident the car was being driven by Chua with the policy holder's permission and Chua was therefore under the terms of the policy issued to Yew Seng & Co. entitled to be indemnified by the defendants in respect of the judgment and costs obtained against him by the plaintiff.

In the circumstances I ordered that judgment be entered against the defendants in the sum of $4,076.30 and costs to be taxed.

Judgment against the defendants.

Solicitors: *Battenberg & Talma; Lee & Lee.*

ISAHAK HAMID v. MUSTAPHA

[Election Petition (Ismail Khan J.) January 16, 1965]

[K.L. — Election Petition No. 8 of 1964]

Election Petition — Stamp on statutory declaration delivered with nomination paper not cancelled — Inadmissibility of statutory declaration — Non-compliance with provisions of regulations — Whether such non compliance affected result of election — Election Offences Ordinance, 1954, s. 32(b) — Elections (Conduct of Elections) Regulations, 1959, regs. 4(3), 6(2) and 7(5).

Election — Improper rejection of nomination and improper acceptance of nomination — Distinction between.

Stamp Ordinance, 1949, ss. 7(3), 7(5) and 52 — Stamp on document not cancelled — Document deemed to be unstamped and inadmissible in evidence.

This was an election petition in which it was prayed that it be determined that the respondent was not duly elected as a member for the Parliamentary Constituency of Tanah Merah, Kelantan to the Dewan Ra'ayat. The main ground for the petition was that the statutory declaration submitted by the respondent with his nomination papers was invalid as the stamp on it had not been cancelled in the prescribed manner and therefore the returning officer was wrong in accepting the nomination papers of the respondent.

Held: (1) as the stamp on the statutory declaration had not been cancelled in the prescribed manner the statutory declaration must be deemed to be unstamped and therefore inadmissible in evidence and could not be acted on for any purpose;

(2) as there was no valid statutory declaration, the returning officer should have rejected the respondent's nomination papers and as this was not done in this case there was a non-compliance with the provisions of the regulations relating to elections;

(3) despite the transgression of the law by the returning officer the election in this case had substantially been conducted in accordance with the principles of the law and therefore as the non-compliance of the law by the returning officer had not affected the result of the election, the respondent must be held to have been duly elected and the petition must be dismissed.

Cases referred to:—

(1) *Rathi* v. *Caramalli Fazal* (1890), I.L.R. 14 Bom. 102.

(2) *Warrington Case* (1869) 1 O'Mally & Hardcastle 44.

(3) *Hackney Case, Gill* v. *Reed and Holms* (1874), 39 J.P. 151; 2 O'Mally & Hardcastle 77.

(4) *Islington West Case* (1901), 17 T.L.R. 210.

(5) *Woodward & Sarsons* L.R. 10 C.P. 743-745.

(6) *Haverfordwest Case* (1874), L.R. 9 C.P. 720.

ELECTION PETITION.

S. E. Teh for the petitioner.

Wan Mustapha for the respondent.

Cur. Adv. Vult.

Ismail Khan J.: An election was held on the 25th April, 1964, to elect a member for the Parliamentary Constituency of Tanah Merah to the Dewan Ra'ayat. The petitioner and the respondent were the only candidates. The respondent was returned by a majority of votes. The petitioner now prays that it may be deter-